

1 AMY L. DOBBERTEEN
Assistant Deputy Director, Bar No. 155111
2 DEBRA L. DENTON
Assistant Chief Counsel, Bar No. 164482
3 PATRICIA STURDEVANT
Senior Counsel, Bar No. 054681
4 CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
5 Office of Enforcement
980 Ninth Street, Suite 500
6 Sacramento, CA 95814-7243
Telephone: (916) 323-0435
7 Facsimile: (916) 323-0438

8 Attorneys for Complainant
9

10 **BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE**
11 **OF THE STATE OF CALIFORNIA**
12

13 IN THE MATTER OF:

14 PLATINUM HEALTH PLUS, LLC

15
16 Respondent.
17
18

) DMHC No.: 04-265

) OAH No.:

) **CEASE AND DESIST ORDER AND
NOTICE OF RIGHT TO HEARING**

) (Health and Safety Code sections 1349,
1360, 1386, 1391 and 1395)
19

20 TO: PLATINUM HEALTH PLUS, LLC

21 The Director of the Department of Managed Health Care, by and through her
22 designee, Assistant Deputy Director Amy L. Dobberteen, after investigation, determines as
23 follows:

24 **I.**

25 **INTRODUCTORY STATEMENT**

26 1. California Health and Safety Code section 1349 requires certain entities
27 arranging for health-care services to first obtain a license from the California Department of
28 Managed Health Care. Respondent is acting as a health care service plan, arranging for the

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DEPARTMENT OF MANAGED HEALTH CARE
By *Cha*
Filing Clerk

provision of health care services, and accepting periodic payments. Accordingly, it is operating as a health care service plan as defined in Health and Safety Code section 1345(f)(1), and required to obtain a license under the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act"). Respondent's failure to obtain a license subjects it to the enforcement powers of the Department of Managed Health Care.

2. Disregarding California law, the out-of-state entity set forth above is soliciting low income, Spanish speaking California residents for purposes of selling health-care services without a license, misleading California consumers and misrepresenting its product. It purports to provide a discount on health care services, but no discounts are available because providers have no arrangement with Respondent to give discounts, and because discounts are only available to members who pay in full for doctor and hospitalization services before or on the day they are rendered.

3. Therefore, the Department of Managed Health Care, by the Order below, hereby directs Respondent to cease and desist from any further unauthorized, deceptive and unlawful activity in the State of California.

II.

STATUTORY AUTHORITY

4. The Director of the Department of Managed Health Care is vested with the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act", Health and Safety Code section 1340, *et seq.*) The intent and purpose of the Knox-Keene Act is to promote the delivery and quality of health and medical care to the people of California who enroll in a health care service plan by, among other things: "Prosecuting malefactors who make fraudulent solicitation or who use deceptive methods, misrepresentations, or practices, which are inimical to the general purpose of enabling a rational choice for the consumer public." (Health and Safety Code sections 1341 and 1342(c).)

5. Health and Safety Code section 1345(f)(1) defines a health care service plan to mean:

1 Any person who undertakes to arrange for the provision of
2 health care services to subscribers or enrollees or to reimburse
3 any part of the cost for those services, in return for a prepaid
or periodic charge paid by or on behalf of the subscribers or
enrollees.

4 6. The Legislature has plainly evidenced its intent as to the application of the
5 Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

6 It is the intent of the Legislature that the provisions of this
7 chapter shall be applicable to any private or public entity or
8 political subdivision which, in return for a prepaid or periodic
9 charge paid by or on behalf of a subscriber or enrollee,
provides, administers or otherwise arranges for the provision
of health care services....

10 7. Any person conducting business as a health care service plan is required to
11 have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349,
12 which provides:

13 It is unlawful for any person to engage in business as a plan in
14 this state or to receive advance or periodic consideration in
15 connection with a plan from or on behalf of persons in this
16 state unless such person has first secured from the director a
17 license, then in effect, as a plan or unless such person is
18 exempted by the provisions of Section 1343 or a rule adopted
thereunder. A person licensed pursuant to this chapter need
not be licensed pursuant to the Insurance Code to operate a
health care service plan or specialized health care service plan
unless the plan is operated by an insurer, in which case the
insurer shall also be licensed by the Insurance Commissioner.

19 8. Untrue and misleading advertising and solicitation, both by affirmative
20 misstatement and by omission of important information, is prohibited by Health and Safety
21 Code section 1360, which provides:

22 (a) No plan, solicitor, solicitor firm, or representative shall
23 use or permit the use of any advertising or solicitation which
24 is untrue or misleading, or any form of evidence of coverage
which is deceptive. For purposes of this article:

- 25 1. A written or printed statement or item of information
26 shall be deemed untrue if it does not conform to fact in
27 any respect which is, or may be significant to an
28 enrollee or subscriber, or potential enrollee or
subscriber in a plan.
2. A written or printed statement or item of information
shall be deemed misleading whether or not it may be
literally true, if, in the total context in which the

statement is made or such item of information is communicated, such statement or item of information may be understood by a person not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage, or the absence of any exclusion, limitation, or disadvantage of possible significance to any enrollee, or potential enrollee or subscriber, in a plan, and such is not the case.

(b) No plan, or solicitor, or representative shall use or permit the use of any verbal statement which is untrue, misleading, or deceptive or make any representations about coverage offered by the plan or its cost that does not conform to fact. All verbal statements are to be held to the same standards as those for printed matter provided in subdivision (a).

9. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

10. Health and Safety Code section 1395 further requires that:

...Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. ... Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable.

11. The Director is empowered to enforce compliance with this Act by Health and Safety Code section 1391, subdivision (a)(1), which provides in relevant part:

The director may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the director pursuant to this chapter.

IV.

Violations of Law

12. Respondent is undertaking to arrange for the provision of health-care services to members, either directly or through arrangements with others, in return for a periodic

1 charge paid by the members, within the meaning of Health and Safety Code section
2 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for
3 the provision of health care services within the meaning of Health and Safety Code section
4 1399.5. Respondent therefore is engaging in business as a health care service plan in this
5 state and receiving advance and periodic consideration in connection with a plan from or on
6 behalf of persons in this state, without having first secured a license from the Director. This
7 conduct violates Health and Safety Code section 1349.

8 13. Respondent's advertising and solicitation practices offer discounts from
9 doctors, dentists, hospitals, and pharmacies that are unavailable because Respondent does not
10 respond within three days as represented; no doctors are available nearby, providers have
11 never heard of Platinum Health Plus; providers will not accept the discount card; providers
12 have not agreed to offer discounted prices, or providers give uninsured patients a discount
13 off the amount insureds pay, so even with the card, a member would pay the same or less
14 than if paying cash without the card. Nor are discounts available from pharmacies such as
15 Costco, despite the fact that Respondent's Membership Guide lists Costco as a participating
16 pharmacy. Additionally, the advertising and solicitations are misleading because they
17 promise a list of providers but do not send one. Finally, Respondent's marketing of a 30 day
18 Satisfaction Guarantee involves representations that are untrue. These practices violate
19 Health and Safety Code sections 1360(a)(1) and (b). (Exhibit A attached hereto)

20 14. Respondent's advertising and solicitation practices are misleading in violation
21 of section 1360(a)(2) and (b) by using language typically associated with insurance
22 coverage, and by offering its health care product in conjunction with Accidental Death and
23 Dismemberment and Accident insurance products. (Exhibit B attached hereto)

24 15. Respondent's advertising and solicitations are misleading in further violation of
25 section 1360(a)(2) and (b) by failing to mention, or to clearly and conspicuously disclose,
26 that payment in full for doctor services and hospitalization is required at the time that
27 services are rendered. This limitation or disadvantage is of significance to both potential
28 members and paying members, particularly for the low-income population targeted by

1 Respondent.

2 16. Respondent's conduct described herein constitutes fraud or dishonest dealing
3 or unfair competition, as defined by section 17200 of the Business and Professions Code, in
4 violation of Health and Safety Code section 1386(b)(7).

5 17. Respondent is engaging in prohibited price advertising using terms such as "up
6 to," in fraudulent, deceitful, or misleading advertising of non-existent discounts, and of
7 offering insurance policies as premiums, gifts or bait to persuade consumers to enroll as
8 members, in violation of Health and Safety Code section 1395.

9 V.

10 **CEASE AND DESIST ORDER**

11 Based on the foregoing, the Director finds that Respondent has violated Health and
12 Safety Code sections 1349; 1360, subdivisions (a)(1), (a)(2), and (a)(3); 1386(b)(7) and
13 1395.

14 **THEREFORE**, pursuant to Health and Safety Code section 1391 of the Knox-Keene
15 Act:

16 **IT IS HEREBY ORDERED:**

17 1. That Respondent, and any of its directors, officers, trustees, managers,
18 affiliates, agents, and all persons participating with them or acting in concert with them, shall
19 immediately **CEASE AND DESIST FROM:**

- 20 a. Operating in California without a Knox-Keene Act license.
- 21 b. Promoting any further deceptive or misleading advertisements or
- 22 solicitations to California residents;
- 23 c. Conducting any enrollment activities in California for health-care
- 24 memberships, including, but not limited to, medical, dental,
- 25 hospitalization, and pharmacy;
- 26 d. Taking, receiving, or forwarding any application for health-care
- 27 memberships from California residents;
- 28 e. Collecting or receiving, in full or in part, any payments for health-care

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memberships from or on behalf of California residents;

2. Respondent shall disclose in any advertisement or solicitation that may reasonably be viewed by residents of the State of California, including, but not limited to, any Internet web page or advertisement that their health care membership product is not available in the State of California.

3. Respondent shall make refund all monies to demanding members without undue delay.

Dated: September 22, 2004

LUCINDA EHNES
Director
Department of Managed Health Care

By:

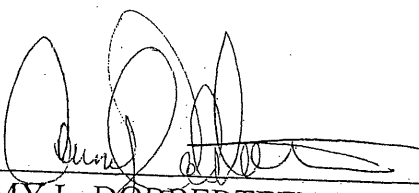

AMY L. DOBBERTEN
Assistant Deputy Director
Office of Enforcement
Department of Managed Health Care

EXHIBIT A



HOW IT WORKS

PLAN OVERVIEW

ABOUT US

24 Hour Nurse
Complementary and
Alternative Medicine
Ancillary Services
Chiropractic
Cosmetic Surgery
Dental
Hearing
Hospitals
Insurance
Medical Equipment
Pediatric Care
Physicians Network
Podiatric Service
Prescription-Mail(CDN)
Prescription-Mail(US)
Prescription-Walk-In
Vision
Vitamins

Peace of mind for under
\$2.00/Day
1-800-471-8315

Satisfaction
30 DAY
Guarantee

click here for details

Full-service
Concierge Desk

\$30,000 Insurance Included
— NO ADDITIONAL COST

Disclaimer | Privacy Policy | Terms & Conditions

EXHIBIT B

How We've Taken Health Plans to the Next Level



1 Guaranteed Discount

Unlike other plans that deliver physician & dental discounts only 50% of the time, we guarantee our members a discount every time, or we write a check for the discount due.



2 Personalized Concierge

Like the Concierge at a 5-Star Hotel - our executive service will look after your need in health care.

How We've Taken Health Plans to the Next Level

CLOSE

1 2 3 4 5 6 7 8

3 Best PPO Networks

Of the 100's of PPO's, we've selected only those of the highest caliber used by the most respected insurance companies.



4 Greatest Choice of Providers

With over 700,000 Health Providers, you have the greatest selection to choose from.



How We've Taken Health Plans to the Next Level

CLOSE

1 2 3 4 5 6 7 8

5 You Control our Service Quality

Through our automated rating system, your ratings control which providers stay in our network and which Customer Service Agents require retraining.



6 We Pre-Call Your Provider

We assure that you are welcomed as one of our special members



How We've Taken Health Plans to the Next Level

CLOSE

1 2 3 4 5 6 7 8 9

7 Complimentary Insurance For Your Family

Just-in-case, we have you and your dependents covered - at no additional cost.



8 Self-Help Medical Research

Medical and drug Libraries; 1,000's of articles on Fitness & Nutrition, Women's Health, Men's Health, Pregnancy, Children's Health, Alternative Health, Health After 60.



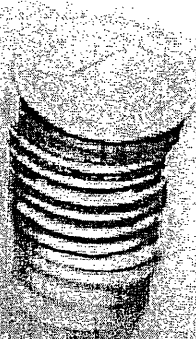
EXHIBIT C

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Unique Health Products

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We provide web and telephone access to the largest selection of Assistive Devices which help people maintain their independence, including diabetic supplies - all at discounted rates.



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Price Plus Quality Service

.....

Not only do we offer the most competitive rates, we do not charge any fees for all of our 'red-card' services because we believe our members deserve the best.